STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR PROPOSED REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 180.2
Title 14, California Code of Regulations
Re: Trap Destruction Devices

I. Date of Initial Statement of Reasons: August 22, 2002

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: August 2, 2002
Location: San Luis Obispo, CA

(b) Discussion Hearing: Date: August 30, 2002
Location: Oakland, CA

(c) Adoption Hearing: Date: October 25, 2002
Location: Crescent City, CA

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Existing law (Section 180.2, Title 14, CCR) requires that every trap used to take finfish, mollusks, or crustaceans by California commercial fishermen must contain a Department approved trap destruction device to serve as an escape hole or mechanism should a trap be lost. The section also specifies trap destruction device opening requirements and defines materials approved for use as destruct material attachments.

Trap destruction devices are important to protect marine organisms when a trap is lost. Lost traps may continue to fish until they fall apart. In order to prevent lost traps from continuing to fish indiscriminately, a passive destruct device must be built into each trap. A lost trap is disabled by deterioration of the destruction device.

Commercial fishing traps are lost for a variety of reasons. Trap loss most commonly occurs due to adverse sea conditions, such as strong waves and wind and/or severe storms. Additionally, loss of visible identification of the trap's location contributes to trap loss. Trap buoy lines and floats which identify a trap's location can be cut by vessel propellers of ship traffic traveling through the fishing grounds, caught in currents, tangled with other fishing equipment or deliberately sabotaged.

The existing regulations do not provide for adequate and enforceable trap destruction device designs because of changes in the specific gear types used in some trap fisheries. The proposed regulatory changes address trap destruct device issues for the Dungeness crab, lobster, and spot prawn fisheries. The Department's goal is to protect marine organisms potentially caught in a lost trap while not placing an undue compliance burden on commercial fishermen. The

proposed revisions clarify and correct the trap regulations and reflect both Department and representatives' recommendations.

The commercial fishery for Dungeness crab occurs in northern and central California. The central California fleet consists of approximately 100 vessels that utilize an area of over 400 square miles from the mouth of the Russian River to the Avila-Morro Bay area. Dungeness fishing grounds in northern California extend from Fort Bragg to the Oregon border encompassing an area approximately twice the size of the central California Dungeness crab fishing grounds. The fleet size in northern California averages approximately 330 vessels per season. Washington and Oregon also have large Dungeness crab fisheries, There has always been vessel movement between fishing areas and states. Additionally, the recent trend in this fishery has been to utilize a greater number of traps. The placement of additional traps in ocean waters has raised concerns by Department staff regarding the potential for increased trap loss at sea and the subsequent need for adequate destruct device construction.

Prior to the start of the 2001-2002 Dungeness crab season, an issue arose regarding the legal definition of a trap destruct device opening. As an operational practice, some northern California Dungeness crab fishermen had been creating a destruct device opening by cutting and removing wire meshes but leaving a "V" or "W" of wire mesh protruding into the required 5-inch diameter opening. Cotton twine was then tied to the points of the protruding Vs or Ws, lacing the opening closed in a manner that replaced the removed wire mesh with the cotton twine which would erode should the trap be lost at sea. This practice prevented the loss of crabs during normal trap fishing. However, in central California the stipulated 5-inch diameter opening was enforced as unobstructed, resulting in a discrepancy between the way the regulation was enforced in northern California in comparison to central California.

A Department review confirmed that the trap destruct device regulation was not being enforced consistently. This review included the destruct device regulations and conferring with both the states of Oregon and Washington regarding their regulations and enforcement policies. Following this review, Marine Region Enforcement determined, based on the existing language of the regulation which stated that a 5-inch opening must be created at the time the destruct material fails providing for the escapement of fish and crabs should the trap become lost at sea, that the 5-inch diameter escape/destruct device opening referred to in Section 180.2, Title 14, CCR should be enforced as an unobstructed opening. Under the existing language of the regulation, protruding meshes within the destruct device opening would not be permitted.

However, since the timing of this determination regarding an unobstructed destruct device opening did not allow sufficient time for full compliance by the north-coast commercial Dungeness crab fishermen prior to the start of the season, Department and representatives and individual fishermen continued to work to revise the existing regulatory language for the 2002-2003 season in a manner that would provide for the protection of marine resource as intended by the original regulation and also address the needs of the fishermen to the extent possible. The proposed regulations are the result of this cooperative approach.

As described above, the regulatory intent of the 5-inch destruct device opening is to allow for the escapement of finfish and crustaceans (crabs) and to render a

trap inoperable should it become lost at sea. A biological review of historic field studies conducted by the Department and by the State of Oregon indicated that a 5-inch diameter opening is sufficient for the release/escapement of adult Dungeness crab, the largest of the crustacean species targeted by these traps. However, at this point, no studies have been conducted to determine the optimal size of a destruct device opening for the release/escapement of finfish which might enter a trap to feed on bait. Due to existing information regarding the size of fish most commonly reported to be found in Dungeness crab traps, the Department believes that a 5-inch diameter destruct device opening is sufficient for the release/escapement of finfish should the trap be lost at sea.

The proposed regulation provides for a 5-inch destruct device opening but allows for a single wire mesh (described as a "V") to protrude into the destruct device opening to serve as an anchor point for the destruct attachment material. The Department's proposed language addresses concern regarding commercial Dungeness crab fishery operational practices while meeting the biological needs for an escape device. Since both crustaceans and the finfish potentially caught in lost Dungeness crap traps are active, the Department does not believe that allowing a single wire mesh to protrude into the destruct device opening will inhibit the release or escapement of these marine organisms provided that the wire used to create the wire mesh is easily bent by escaping crustaceans and finfish. For this reason, the Department has proposed the addition of language regulating the wire size of the "V" to no larger than .05 inch diameter. This proposed language reflects both Department and representatives' recommendations.

Although the Department believed that the needs of the Industry had been addressed under the language revising the regulation to allow for a single protruding wire mesh into the destruct device opening, some north-coast commercial Dungeness crab fishermen maintain that it is necessary to allow up to three meshes to protrude into the destruct device opening. This alternative would allow for the continuation of the operational practices of some northern California Dungeness crab fishermen who create their destruct device openings by cutting and removing wire meshes but leaving a single wire mesh (a "V") protruding into the opening on one side and up to two individual wire meshes (a "W") protruding into the opening on the other side. It is maintained by these fishermen that this method of destruct device construction is necessary due to the construction style of their traps which utilize a smaller mesh size, which makes the allowance for the protrusion of a single wire insufficient to meet the required 5-inch opening. The exact number of fishermen who would be affected by the allowance of only a single protruding wire mesh, rather than multiple meshes, is not known. However, the Department does not believe that the number of trap fishermen would be high in comparison to the number of fishermen in the commercial Dungeness crab fishery as a whole.

The Department does not support the alternative language revision that would allow for a protruding "V" in the opening on one side and up to two individual wire meshes (a "W") protruding into the opening on the other side, as proposed by some of the north coast crab fishermen. While the Department recognizes that wire mesh Dungeness crab traps are not all constructed in the same manner and do not necessarily have the same size mesh, the lack of biological knowledge in regard to the ability of a finfish to escape from a lost trap does not support this alternative proposal from fishermen to allow up to two additional

meshes to protrude into the destruct device opening. Despite the aggressive nature of the finfish potentially caught in a lost Dungeness crab trap, the ability of a fish to discern the destruct device opening, which is obscured by up to three protruding meshes, is not known. Further, the protruding ends of these meshes contain sharp points which could easily injure the soft tissue portions of trapped finfish as they move through the destruct device while escaping from the trap. It is recognized by the Department that soft tissue injuries associated with the shape point of a single protruding mesh could occur. However, the allowance for up to two additional protruding meshes, as proposed in the alternative language, has the potential to exacerbate this soft tissue injury problem.

Existing language contained in Section 180.2, Title 14, CCR provides for an alternative trap lid closure destruct device mechanism that could be employed by Dungeness crab fishermen who can not meet the 5-inch destruct device opening requirements with a single protruding wire mesh. The lid closure destruct device mechanism has been shown to be quite effective in the release/escapement of both finfish and crustaceans and could easily be employed by any trap fisherman who could not otherwise comply with the regulation as amended by the Department's proposed revision. Although commercial crab fishermen have expressed reservations regarding the use of the lid closure destruct device mechanism, due to its higher cost and tendency to function as a release/escapement device sooner than the constructed in-mesh destruct device, it remains a viable option that is presently used by many commercial crab fishermen and has been shown to be effective as a destruct device for Dungeness crab traps.

Additional proposed revisions of Sections 180.2 (a)(2) and (b), Title 14, CCR, that will affect the Dungeness crab fishery include: 1) a clarification that the cotton twine used as a destruct attachment material be untreated; 2) a clarification that the cotton twine used as a destruct attachment material be single stranded; and 3) a clarification that the cotton twine used as a destruct attachment material for trap lid closure destruct mechanisms consist of a single loop. The clarification language is proposed by the Department in consultation with the Industry due to recent encounters by Marine Region enforcement staff of cotton twine that is multi-stranded and/or has been dipped or treated to inhibit or prevent destruct action. The addition of the proposed clarification language will ensure that the intent of the regulation in regard to destruct device attachment material is maintained and that the destruct action of the attachment material will occur, as intended, over a reasonable period of time should the trap be lost.

In addition to the proposed revisions pertaining to the Dungeness crab fishery, the Department has proposed changes to Section 180.2 (a)(1), Title 14, CCR, which affect the California lobster fishery. The California Lobster and Trap Fishermen's Association has requested that the Department propose a revision of the regulatory language to eliminate the reference to the one-quarter (.25) inch soft steel rod as a destruct attachment material contained in the existing regulation. It is the position of the California Lobster and Trap Fishermen's Association that steel rods are not currently being used as a destruct material in California's trap fisheries, nor is their use as a destruct device material biologically desirable. The Department concurs with this recommendation, recognizing that even soft steel rods take an unacceptable period of time (a year or more) to corrode. The Department, therefore, proposes a revision of the

regulation to remove the reference to one-quarter (.25) inch soft steel rods and to replace this destruct material with the standard -used 14 gauge (.080 + or -.003 inch) or smaller metal hog rings. The metal hog rings are a preferred industry standard destruct attachment material used because of their ease of replacement under working conditions while at sea.

The California Lobster and Trap Fishermen's Association had proposed the designation of a 15-gauge metal hog ring as a destruct attachment material. However, spot prawn trap fishermen are presently using hog rings that are 14-gauge which are slightly larger than those used by lobster fishermen. The Department recognizes that both gauge hog rings rust away in a 2 to 3 month period and proposes that, for the purpose of clarity, the regulation stipulate that 14 gauge or less metal hog rings that are not stainless steel or made of another non-corrosive material shall be used. The use of metal hog rings in this fashion meet the biological intent of the trap destruct device while accommodating the industry's requested regulatory revision.

Other changes relating to the size of hog ring and metal clip gauges, and the type of metal that can be used for destruct device attachment material, are proposed for the purpose of clarity. The addition of the phrases "+ or –.003 inch" and "or less" in Sections 180.2 (a)(1) and (a)(3) are necessary to allow for manufacturing tolerances. An additional phrase to specify "excluding stainless steel or other non-corrosive materials" is proposed in order to clarify that destruct device attachment materials must consist of a material that will corrode quickly should a trap be lost at sea.

Finally, the authority and reference sections were reviewed and updated by deleting inappropriate sections.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Section 9003, Fish and Game Code.
Reference: Sections 9003 and 9008, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change: None

(d) Identification of Reports or Documents Supporting Regulation Change:

None were identified.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The Department has been working with representatives from the Pacific Coast Federation of Fishermen's Associations, Fishermen's Marketing Association, Del Norte Fishermen's Marketing Association, Humboldt Fishermen's Marketing Association, Bodega Bay Marketing Association, California Lobster & Trap Fishermen's Association, and individual fishermen on amending this section.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Industry Proposed Alternative

To address the concerns of some north-coast commercial Dungeness crab fishermen, representatives from the Pacific Coast Federation of Fishermen's Associations, Fishermen's Marketing Association proposed the following alternative language for the revision of Section 180.2(a), Title 14, CCR:

> …*except traps used to take Dungeness crabs, which are constructed of wire mesh, may have up to three meshes that protrude into the destruct device opening provided that the points of each of these meshes are separated by at least one side (bar) of an adjoining mesh that has been removed and each of the meshes extend into the opening a distance of not more than 2 ½ inches, as measured from the perimeter of the opening along either edge of the protruding wire mesh, and serve as an anchor for the destruct attachment material. On Dungeness crab traps constructed of wire mesh, the panel containing the destruct device and the wire mesh acting as an anchor for the destruct material must be constructed of a single wire no greater than .050 inches in diameter*…

The representatives of the north-coast commercial Dungeness crab fishermen maintain that it is necessary for uninhibited fishing operation to allow up to three meshes to protrude into the destruct devise opening. This alternative language would allow some northern California commercial Dungeness crab fishermen to continue to operate using the practice of creating destruct devises in their crab traps by cutting and removing wire meshes but leaving a single protruding wire mesh (a "V") on one side of the opening and up to two individual wire meshes (a "W") protruding into the opening on the other side. These fishermen maintain that this method of destruct device construction is necessary due to the construction style of their traps which utilize a smaller mesh size, thereby rendering the allowance for the protrusion of a single wire insufficient.

The Department does not support the industry's proposed revision language. Although biological studies have not been conducted to determine an optimal size of a destruct device opening for the release/escapement of finfish which might enter a trap to feed on bait, the Department believes that a 5-inch diameter destruct device opening is sufficient. The Department's proposed revision language provides for a 5-inch destruct device opening but allows for a single wire mesh (described by the industry as a "V") to protrude into the destruct device opening to serve as an anchor point for the destruct attachment material. The regulation, as amended, would address industry concerns regarding the operational practice of a large majority of commercial Dungeness crab fishermen while meeting the biological needs for an escape device. Since both crustaceans and the finfish potentially caught in lost Dungeness crap traps are aggressive in nature, the Department does not believe that allowing for single wire mesh to protrude into the destruct device opening will inhibit the release/escapement of these marine organisms. However, despite the aggressive nature of the finfish potentially caught in lost traps, without further study it is difficult to assess what effect the allowance of up to two additional protruding meshes within the destruct device opening would have on inhibiting the release/escapement of finfish.

In addition to the above described potential inhibition of release/escapement of finfish which could occur under the industry's proposed regulation amendment, the Department also believes that there is an increased risk of injury to finfish. The protruding ends of the wire meshes will contain shape points which could easily injure the soft tissue portions of trapped finfish as they move through the destruct devise opening while escaping from the trap. It is recognized by the Department that soft tissue injuries associated with the shape point of a single protruding mesh could also occur. However, the allowance for up to two additional protruding meshes as proposed by the industry has the potential to exacerbate this soft tissue injury problem. Further, existing language contained in Section 180.2, Title 14, CCR, provides for an alternative trap lid closure destruct device mechanism that could be employed by Dungeness crab fishermen who can not meet the 5-inch destruct device opening requirements with a single protruding wire mesh. The lid closure destruct device mechanism has been shown to be quite effective in the release/escapement of both finfish and crustaceans and could easily be employed by any trap fisherman who could not otherwise comply with the wire mesh destruct device regulation as amended by the Department's proposed language.

(b) Alternatives to Regulation Change:

Dungeness trap language that would allow for the measurement of a 5-inch diameter escape opening with a weighted gauge was considered, as was a measuring device that was propelled with "thumb pressure". Both methods allowed for an anchoring mesh or meshes to be moved aside by the gauge when determining the escape opening. From an enforcement viewpoint, thumb pressure is imprecise and subjective, which makes such a regulation difficult to enforce. Further, the creation of a weighted gauge for warden use in determining the ability of a mesh to bend under a set amount of pressure, as well as the likelihood of an inability to consistently apply such a device under field conditions renders this alternative infeasible.

A program to educate trap fishermen about destruct materials and devices was considered. This alternative was rejected because the Department does not have the staff or funding to support such an effort. Additionally, given the diversity of traps utilized in the State, the different seasons and target species involved, and the uncertainty of voluntary compliance, the success of such a program would not be guaranteed.

(b) No Change Alternative:

The trap destruction device section as written would continue to function, but with decreasing effectiveness. Loopholes in the regulations provide increasing opportunities for trap fishermen to create trap destruction devices that, while legal according to the regulatory language, defeat the intent of the regulation. The subsequent effect would be the deployment of traps with destruct attachment materials that do not allow for proper operation of the device should the trap be lost at sea. With the number of traps being deployed by spiny lobster, rock crab, Dungeness crab, and spot prawn fishermen increasing, California needs to have an enforceable, unambiguous set of destruct device regulations that are appropriate for maximizing protection of marine resources with the current trap technology in use.

The intent of an escape opening is that it allows for not only the targeted species to escape, but also the release/escapement of all other fish and invertebrates that might swim into the trap should the trap become lost at sea. If the current regulatory language is not clarified, the Department's wardens will enforce a completely unobstructed 5-inch diameter escape opening, pursuant to a previous Department Division of Legal Affairs review. Enforcement of an unobstructed 5-inch diameter destruct device opening would not allowance for Dungeness crab traps to have a mesh protruding into that the destruct device opening. An unknown number of Dungeness crab fishermen would have to modify the destruct openings on their existing wire mesh traps before the start of the season on November 15, 2002 in central California and December 1, 2002 in northern California.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States.

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed revision clarifies the original intent of the regulation regarding the requirement for all traps used for the commercial take of crab, lobster and spot prawn to contain a destruct device. The required destruct device disables a trap should it become lost at sea. Under normal circumstances a trap lost at sea is not retrievable. The economic impact to the industry and/or the individual fisherman is associated with the loss of the trap and not in compliance with the regulation. The proposed language specifies acceptable destruct device designs and materials, but does not change existing regulatory requirement for a destruct device. Compliance with the proposed regulation will alter existing operational practices for a small portion of the commercial trap fishermen and, therefore, does not pose a significant statewide adverse economic impact for the industry or associated businesses.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business:

The Commission is aware that a representative private person or business could incur approximately $140 in annual cost impacts in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

(e) Other Nondiscretionary Costs/Savings to Local Agencies: None

(f) Programs Mandated on Local Agencies or School Districts: None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None

(h) Effect on Housing Costs: None

Informative Digest/Policy Statement Overview

Currently, all traps deployed by commercial fishermen licensed in the state of California must contain a trap destruction device. The devices approved for use by the Department are specified in Section 180.2, Title 14 CCR.

The California Department of Fish and Game is proposing:

- the clarification that Section 180.2, Title 14 CCR applies to all traps placed in ocean waters off the coast of California;
- the addition of language to stipulate that it is illegal to cause or otherwise defeat the intent of a trap destruct device;
- the addition of clarifying language that specifies that the escape opening of 5 inches in diameter is unobstructed;
- the addition of clarifying language for the destruct device in wire mesh Dungeness crab traps to allow for the protrusion of a single wire mesh into the escape opening to serve as an anchor for the destruct device attachment material;
- the elimination of a soft steel rod not greater than one quarter (.25) inch in diameter from the approved list of devices, and the addition of 14 gauge (.080, + or - .003 inch or smaller) metal hog rings not made of stainless steel or other non-corrosive material as an approved destruction device;
- the addition of clarifying language that specifies a single strand of untreated cotton twine size No. 120 or less in Dungeness crab traps, and untreated cotton twine size No. 21-thread of less in other traps;
- the addition of clarifying language that specifies that 24 gauge bare metal crimps shall be .028 + or - .003 inch or smaller; and
- the addition of clarifying language specifying that a single loop of untreated cotton twine size No. 120 or less may be used as destruct device material for attaching rubber door closing straps to metal or plastic clips.